

GARY M. RESTAINO
United States Attorney
District of Arizona
DENISE ANN FAULK
Assistant U.S. Attorney
State Bar No. 12700
United States Courthouse
405 W. Congress Street, Suite 4800
Tucson, Arizona 85701
Telephone: (520) 620-7300
Email: denise.faulk@usdoj.gov
Attorneys for Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Keith Raniere,

Plaintiff,

vs.

Merrick Garland, et al.,

Defendants.

CV-22-00561-TUC-RCC

**DEFENDANTS' MOTION TO
STRIKE PLAINTIFF'S REPLY TO
DEFENDANTS' RESPONSE TO
MOTION FOR LEAVE TO FILE
PLAINTIFF'S STATEMENT OF
FACTS AND CONTROVERTING
STATEMENT OF FACTS IN
OPPOSITION TO DEFENDANTS'
STATEMENT OF FACTS IN
SUPPORT OF DEFENDANTS'
SUMMARY JUDGMENT MOTION
*NUNC PRO TUNC***

Defendants Garland, Peters, Gutierrez and Ulrich, acting in their official capacities by and through undersigned counsel, hereby move to strike Plaintiff's Reply To Defendants' Response to Motion for Leave to File Plaintiff's Statement of Facts and Controverting Statement of Facts in Opposition to Defendants' Statement of Facts in Support of Defendants' Summary Judgment Motion *Nunc Pro Tunc* (Doc. 77) as untimely. This motion is supported by the attached memorandum of points and authorities and all matters of record.

Memorandum of Points and Authorities

I. Background

On May 1, 2023, Defendants filed their motion for summary judgment. (Doc. 35.)

1 Defendants supported the motion with a separate Statement of Facts (SOF). (Doc. 36.)
2 The SOF was based on a sworn Declaration and authenticated documents. (*Id.*) On June
3 21, 2024, over one year after the original deadline, Plaintiff filed his Response to the
4 Defendants' Motion for Summary Judgment on Exhaustion, without a controverting
5 statement of facts. (Doc. 71.) On July 8, 2024, Defendants filed their reply, in which they
6 noted Plaintiff's failure to file a controverting statement of facts, *inter alia*. (Doc. 72 at 2.)
7 The motion has been deemed ready for decision without oral argument since July 9, 2024.
8 (Doc. 37 at 5.)

9 On August 13, 2024, Plaintiff filed his motion seeking leave to file a statement of
10 facts and a controverting statement of facts untimely. (Doc. 73.) On August 27, 2024,
11 Defendants filed their response opposing the motion. (Doc. 74.) On September 13, 2024,
12 seventeen days later, Plaintiff filed his reply. (Doc. 77.)

13 **II. The Court Should Strike the Reply**

14 Rule 17.2(m)(1) provides that a motion to strike may be filed "if it seeks to strike
15 any part of a filing or submission on the ground that it is prohibited (or not authorized) by
16 a statute, rule, or court order." LRCiv 17.2(m)(1). Rule 17.2(d) provides that "[t]he
17 moving party, unless otherwise ordered by the Court, and except as otherwise provided by
18 Rules 12.1 and 56.1, Local Rules of Civil Procedure, shall have seven (7) days after
19 service of the responsive memorandum to file a reply memorandum if that party so
20 desires." LRCiv 17.2(d). Plaintiff filed his reply seventeen days after Defendants filed
21 their response. (Doc. 77.) Plaintiff failed to request an extension of time to file it.
22 (Docket, generally.) Thus, Plaintiff filed his reply ten days late.

23 The Court should exercise its discretion to strike Plaintiff's Reply.

24 **III. Conclusion**

25 Based on the foregoing, this Court should strike Plaintiff's Reply To Defendants'
26 Response to Motion for Leave to File Plaintiff's Statement of Facts and Controverting
27 Statement of Facts in Opposition to Defendants' Statement of Facts in Support of
28 Defendants' Summary Judgment Motion *Nunc Pro Tunc* (Doc. 77).

1 RESPECTFULLY SUBMITTED: September 16, 2023.

2 GARY M. RESTAINO
3 United States Attorney
4 District of Arizona

5 *s/ Denise Ann Faulk*
6 DENISE ANN FAULK
7 Assistant U.S. Attorney

8 Copy of the foregoing
9 served via CM/ECF to:

10 Arthur L Aidala
11 Law Offices of Aidala, Bertuna
12 & Kamins PC - Brooklyn, NY
13 8118 13th Ave.
14 Brooklyn, NY 11228
15 Email: aidalaesq@aidalalaw.com
16 Attorney for Plaintiff

17 *s/ M. Parker*

18 / MT Strike Reply - ND
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